



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:

)
)
)
)
)

ISCR Case No. 17-02090

Applicant for Security Clearance

Appearances

For Government: Michelle Tilford, Esq., Department Counsel

For Applicant: *Pro se*

03/20/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant has either paid or is making payments towards the satisfaction of debts alleged in the Statement of Reasons (SOR) that she admitted, and she has retained a financial counselor to help her resolve the SOR debts that she disputes. Under these circumstances, I conclude Applicant's financial situation is under control. Clearance is granted.

Statement of the Case

On July 11, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline F, financial considerations, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On July 14, 2017, Applicant answered the SOR allegations, admitting subparagraphs 1.a through 1.c, and denying the remainder. She requested a decision based on the administrative record instead of a hearing. On September 27, 2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on October 25, 2017, and filed a response that DOHA received on December 5, 2017. The case was assigned to me on February 14, 2018.

Findings of Fact

Applicant is a 31-year-old married woman with one child, age eight. She is a high school graduate and has taken some college courses. Since 2011, she has worked for a federal contractor as a security officer. (Item 3 at 14)

The SOR alleges 27 debts totaling approximately \$35,000. SOR subparagraph 1.a is a loan for a car Applicant purchased in 2013. (Item 6 at 1) When Applicant purchased the car, a relative was providing daycare services for her son free of charge. Shortly after buying the car, however, Applicant's work hours increased, requiring her to begin earlier in the morning and leave later in the evening. Consequently, she was unable to avail herself of her relative's daycare services, and had to switch to a daycare center that charged a fee. (Response at 1) Unable to afford both the daycare expenses and the car payments, Applicant voluntarily returned the car. By October 2014, the debt, totaling \$12,579, was charged off. (Response, Attachment (Att.) 1) In November 2017, Applicant contacted the current creditor and developed a payment plan, beginning with one \$1,800 payment, followed by monthly \$150 payments. (Response, Att. 1)

SOR subparagraph 1.b totals \$427. Applicant satisfied this debt on November 30, 2017. (Response, Att. 2) SOR subparagraph 1.c is a judgment, totaling \$851. Applicant satisfied this debt two years ago in February 2016. (Response, Att. 3)

Applicant disputes the remaining debts, contending that she was a victim of identity theft. (Item 2 at 2; Response at 2-3) She noted that several of these disputed debts were allegedly incurred in a state where she has not lived since finishing high school 14 years ago. (Item 2 at 1) In May 2017, she retained a credit counselor to research the respective holders of these debts and dispute them. As of July 2017, she was in the process of reviewing the dispute letters that the financial counselor had drafted on her behalf. (Item 5)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines

are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).¹

Analysis

Guideline F, Financial Considerations

The security concerns about financial considerations are set forth in AG ¶ 18:

Failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. . . .

Applicant's delinquencies trigger the application of disqualifying conditions AG ¶ 19(a), "inability to satisfy debts," and AG ¶ 19(c), "a history of not meeting financial obligations."

¹ The factors under AG ¶ 2(d) are as follows:

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The following mitigating conditions are potentially applicable:

AG ¶ 20(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

AG ¶ 20(c) the person has received or is receiving counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;

AG ¶ 20(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

AG ¶ 20(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant satisfied the debts alleged in subparagraphs 1.b and 1.c, therefore I resolve them in her favor. She began struggling with her car note after a change in her work schedule compelled her to switch day care providers from a relative who did not charge her, to a private daycare provider. She was unable to balance the car payments with her unanticipated daycare costs. Recently, she has contacted the creditor holding the auto loan and arranged a payment plan. Under these circumstances AG ¶ 20(b) applies.

Applicant's contention that she was not living in the state where the majority of the creditors of the disputed debts are located does not establish that they were not her debts. Nevertheless, her contention is not unreasonable. This contention, together with her solicitation of a financial counselor to help her resolve the disputed debts is sufficient to trigger the application of AG ¶ 20(e).

Applicant's resolution of subparagraphs 1.b and 1.c, together with the steps taken to begin paying off the car note, alleged in subparagraph 1.a, trigger the application of AG ¶ 20(d). In tandem with her work with a financial counselor to identify and contact disputed creditors, it is clear that Applicant is resolving her financial issues and is getting them under control. AG ¶ 20(c) applies. In sum, I conclude Applicant has mitigated the financial considerations security concerns.

Whole-Person Concept

Applicant has paid two SOR debts, arranged to pay another one, and is disputing the remaining debts with the help of a credit counselor. Under these circumstances, I conclude she has mitigated the security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	FOR APPLICANT
---------------------------	---------------

Subparagraphs 1.a – 1.aa:	For Applicant
---------------------------	---------------

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge